In the

Supreme Court of the United States

October Term, 1967

No. 406

Hugh Miller Mercer, *et al.*,

Appellants,

—against—

Arthur I. Hemmings, *et al.*,

Appellees.

Herman W. Bevis, *et al.*,

Appellants,

—against—

Mark W. Eastland, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION OF W. R. GRACE & CO. FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING

W. R. Grace & Co. hereby respectfully moves for leave to file a brief *amicus curiae* in support of appellants' petition for rehearing in this case. The consent of the attorneys for appellants has been obtained. The consent of the attorney for appellees was requested, but had not been obtained at the time the motion and brief were printed.

W. R. Grace & Co. is interested in the instant appeals because its audit work is performed by Price Waterhouse

& Co., appellants herein, and because it and its subsidiaries engage in extensive business activities in Florida, among other states. Grace, therefore, has a substantial interest in seeing that Price Waterhouse is able to conduct such audit work in Florida as is necessary to ensure that it is able to express an unqualified opinion with respect to Grace's financial statements.

This motion is made by W. R. Grace & Co. so that it may emphasize to the Court the damaging effect which the decisions below will have on financial reporting practices of W. R. Grace & Co. and other companies similarly situated.

Respectfully submitted,

LEO A. LARKIN
Attorney for W. R. Grace & Co.,
Amicus Curiae

November 17, 1967

IN THE

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October Term, 1967

No. 406

HUGH MILLER MERCER, *et al.*,

Appellants,

—against—

ARTHUR I. HEMMINGS, *et al.*,

Appellees.

HERMAN W. BEVIS, *et al.*,

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—against—

MARK W. EASTLAND, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

BRIEF OF W. R. GRACE & CO., *AMICUS CURIAE*

This brief is respectfully submitted by W. R. Grace & Co. in support of its request that this Court grant rehearing of its decision of October 23, 1967, granting appellees' motion to dismiss, note probable jurisdiction of the appeals, and assign the case for oral argument on the merits.

Argument

W. R. Grace & Co. is a Connecticut corporation. It is engaged directly and through subsidiaries in the manufacture, production, processing and distribution of chemicals, foods and other products throughout the United States and in most parts of the free world, and in the operation of steamships in the trade between the United States and Central and South America. Its securities are publicly held, and at present there are more than 45,000 holders of its common stock. Its common stock and debentures are listed on the New York Stock Exchange, Midwest Stock Exchange and other regional exchanges. In recent years Grace's consolidated sales and revenues have been in excess of $1,000,000,000. The operations of Grace are conducted directly and through approximately 250 subsidiaries.

W. R. Grace & Co. and its subsidiaries have substantial operations in Florida including the mining of phosphate rock and the manufacture of concentrated phosphates and other fertilizers, polystyrene and polyesters. It also operates a research nursery for seeds of various types and has several sales offices, warehouses and other distribution facilities. Its sales in Florida in 1966 were approximately $30,000,000.

As a publicly held company, Grace is required by various federal and state laws, including the laws administered by the Securities and Exchange Commission, as well as by the demands of the market place, to retain a firm of independent public accountants to audit its financial statements to insure that those statements fairly present the financial position of the Company and its consolidated subsidiaries and the results of their operations in accordance with generally accepted accounting principles applied on a consistent basis. To fill this need, Grace has for many years

retained the firm of Price Waterhouse & Co., which it regards as a firm of broad experience and unsurpassed standards of performance.

In order properly to service the present audit needs of a company with Grace's far-flung interests, it is desirable that Price Waterhouse maintain regular offices and facilities throughout the United States and in other parts of the world whose personnel are familiar with Grace's local operations and hence can participate effectively under the overall supervision of the New York office in periodic and special examinations of the financial statements of Grace and its subsidiaries. In Grace's view it would be inadvisable from an audit standpoint for Price Waterhouse to contract out to others any substantial segment of the auditing work in other states. Irrespective of the qualifications of such other auditors, it is desirable that in an audit of financial statements as complex as those of Grace, Price Waterhouse have complete authority and direct participation in the handling of such work, so that the audit work is conducted as an integrated whole and that unqualified opinions in respect of the financial statements may be expressed by Price Waterhouse & Co. Lending institutions and other investors, who are the sources of Grace's heavy demands for capital, frequently request such opinions from a recognized national firm such as Price Waterhouse & Co.

Price Waterhouse's ability to fulfill the accounting needs of Grace and the demands of its investors will be hindered by the decisions of the Florida state courts in the above appeals. Such a prospect, even as to a single state, is disturbing and if other states, encouraged by the Florida rulings, were to adopt and enforce similar exclusionary policies, the auditing problems occasioned by the exclusion of Price Waterhouse and other national firms might affect the ability of Grace to obtain satisfactory opinions from

independent public accountants in respect of its financial statements. Such a situation might also affect practices in respect of the financing of large publicly held corporations such as Grace.

CONCLUSION

For the above reasons, W. R. Grace & Co. respectfully requests that this Court grant rehearing, note probable jurisdiction, and assign the cases for oral argument.

Respectfully submitted,

LEO A. LARKIN
Attorney for W. R. Grace & Co.,
Amicus Curiae